Supreme Court, U. S.
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IN THE

SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1978

No. 78-720

BANK OF HENDERSONVILLE,
Petitioner,

v.

RED BARON FLYING CLUB, INC.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE

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IN THE

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OCTOBER TERM, 1978

No.

BANK OF HENDERSONVILLE,
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RED BARON FLYING CLUB, INC.,
Respondent.

PETITION FOR A WRIT OF CERTIORARI TO THE SUPREME COURT OF TENNESSEE

The petitioner, Bank of Hendersonville, respectfully prays that a Writ of Certiorari issue to review the judgment of the Supreme Court of Tennessee entered in this proceeding on July 31, 1978, denying the Petition of the Bank of Hendersonville for a Writ of Certiorari to review the opinion and judgment of the Court of Appeals of Tennessee, Middle Section, entered on December 2, 1977.

OPINION BELOW

The opinion of the Court of Appeals of Tennessee, Middle Section at Nashville, not yet reported, and the Memorandum Opinion of the Chancellor of the Chancery Court of Putnam County, Tennessee, appear in the Appendix hereto, as does the judgment of the Supreme Court of Tennessee denying the Petition for a Writ of Certiorari. No other opinion was rendered by the Supreme Court of Tennessee.

JURISDICTION

The judgment of the Supreme Court of Tennessee was entered on July 31, 1978, and this Petition for Certiorari was filed within ninety (90) days of that date. This Court's jurisdiction is invoked under 28 U.S.C. § 1257(3).

QUESTION PRESENTED

Did the Congress in enacting the provisions of the Federal Aviation Act, 49 U.S.C. §§ 1401 *et seq.*, which provide that, from the time of filing for recordation of any conveyance which affects the title to, or any interest in, any civil aircraft of the United States, such conveyance or interest shall be valid as to all persons, intend to protect a person who lends money to a dealer in aircraft on the security of the dealer's inventory, despite a state law rule purporting to protect purchasers in the ordinary course of business from prior perfected security interests, where the sale is effected without accounting for the proceeds to the dealer's financer?

STATUTORY PROVISIONS INVOLVED

The apposite provisions of the Federal Aviation Act, 49 U.S.C. §§ 1401-1406, are reproduced in the Appendix, as is Section 9-307 of the Uniform Commercial Code, T.C.A. § 47-9-307.

STATEMENT OF THE CASE

The petitioner here is a bank which was, in part, financing a corporation, Mid-South Aviation, Inc., a dealer in aircraft which bought and sold airplanes at retail. The Bank of Hendersonville loaned money to Mid-South Aviation, Inc., on the security of the airplane here involved, and this note was secured by a security interest created by a validly executed security agreement, correctly identifying the aircraft and recorded as required by 49 U.S.C. § 1403. The note and security agreement were dated June 11, 1974, and the security agreement was filed for record with the FAA Aircraft Registry in Oklahoma City, Oklahoma, on June 25, 1974.

The aircraft in issue was purchased by the Red Baron Flying Club, Inc., on August 2, 1974, and on August 5, 1974, the Red Baron Flying Club forwarded its bill of sale to the Federal Aviation Administration in Oklahoma City for recordation. Inquiry by telephone or by mail would have apprised the respondent, Red Baron Flying Club, Inc., of the existence and filing of the notice of the security interest owned by the Bank of Hendersonville.

Mid-South Aviation, Inc., was subsequently adjudicated a bankrupt in the United States District Court for the Middle District of Tennessee, and, upon learning that the airplane, which was the subject of its security interest, had been sold to Red Baron, the Bank of Hendersonville made demand upon the Flying Club, in the alternative, for the return of the aircraft or the payment of $13,761.75, the balance then due and unpaid on the promissory note. The respondent, Red Baron Flying Club, Inc., through its counsel, refused to pay the balance due on the note of Mid-South Aviation, Inc., or to return the aircraft, and, in fact, made demand upon the Bank of Hendersonville that it take the necessary

steps to release the security interest of record with the Federal Aviation Administration in Oklahoma City.

The petitioner, Bank of Hendersonville, took the position that the recording provisions of the Federal Aviation Act preempted conflicting state rules, and that its security interest, of record at the Federal Aviation Administration Aeronautical Center, was a first lien upon the aircraft, and that the Red Baron Flying Club purchased the airplane subject to this security interest. PARAGRAPH "*SECOND*" of the petitioner's Complaint in the Chancery Court for Putnam County, Tennessee, claimed the protection of the federal statute in the following language:

> *SECOND:* On June 25, 1975, the security agreement, described herein as "Exhibit A", was caused by plaintiff to be filed for record with the Department of Transportation, Federal Aviation Administration Aeronautical Center, Oklahoma City, Oklahoma. Said conveyance was recorded at that Center on July 1, 1974, as Conveyance No. C117864, all as shown on the notice of recordation sent to the plaintiff by the Department of Transportation, and a copy of which is attached hereto marked as "Exhibit B". The effect of said recordation, without more, was to afford constructive notice to all subsequent purchasers and lienors of plaintiff's prior rights.

The respondent, Red Baron Flying Club, Inc., has consistently taken the position in this litigation that it was a "purchaser in the ordinary course of business" within the meaning of state law, the Uniform Commercial Code, Tennessee Code Annotated § 47-9-307, and that, as such, it took the aircraft free of any pre-existing security interests, whether or not it knew of them, or could reasonably have learned of them, and furthermore,

whether or not sale of the aircraft was forbidden by the security agreement of the Bank of Hendersonville, which was the case.

The Chancery Court of Putnam County, Tennessee, held that the provisions of the Federal Aviation Act regarding the recordation of interests in aircraft preempted the "purchaser in ordinary course of business" doctrine of state law, and that the Red Baron Flying Club did in fact purchase the aircraft subject to the prior security interest of the Bank of Hendersonville. This decision was reversed by the Court of Appeals of Tennessee, Middle Section, at Nashville, which held, with one of the three-judge panel dissenting, that there was no intent on the part of Congress to preempt state law with regard to such issues as the "purchaser in ordinary course of business" doctrine, and that even though the security interest of the Bank of Hendersonville was "valid" as to all persons from and after filing for recordation with the Federal Aviation Administration Aeronautical Center, the validity related only to the intrinsic enforceability of the instrument, and not to its "notice" effect on third parties. The dissenting judge, as did the majority, admitted that "the issue is obviously not free from doubt," but concluded that Congress intended in 49 U.S.C. § 1403 to set up a rule of priority that controls the conflicting interest between the aircraft dealer's financer or lender and one who purchases from a dealer in aircraft. On July 31, 1978, the Supreme Court of Tennessee denied the Petition of the Bank of Hendersonville for a Writ of Certiorari.

REASONS FOR GRANTING THE WRIT

The conflict between state and federal law presented by this case is a particularly acute and significant one, and in light of recent judicial developments, it seems to the petitioner imperative that the matter be reviewed by this Court. The wholesale aircraft financing industry has been placed in an untenable position by decisions such as the one sought to be reviewed here, and the purchasers of aircraft are similarly positioned upon the horns of a dilemma, faced with continuing litigation where they have purchased an aircraft impressed with a lien created by a prior consensual security agreement between a lender and the selling dealer.

The precise issue presented by this petition was passed upon by the Supreme Court of California in *Dowell v. Beech Acceptance Corp., Inc.*, 3 Cal. 3d 544, 91 Cal. Rptr. 1, 476 P.2d 401 (1970). There, the Supreme Court of California in a well-reasoned opinion held that prior recorded security interests are protected against subsequent buyers who fail to search the Federal Aviation Administration Aeronautical Center records. The California court concluded that the Federal Aviation Act, 49 U.S.C. § 1401 *et seq.*, provides a plenary priority system, with the key being the first to record, and contradictory state priority rules are therefore preempted. While there have been decisions of other courts which opted for the application of the state "purchaser in the ordinary course of business" doctrine, *e.g., Sanders v. M. D. Aircraft sales, Inc.*, 575 F.2d 1086 (3rd Cir. 1978); *Idabel National Bank v. Tucker*, 544 P.2d 1287 (Okl. App. 1976), the question as to whether state or federal law controls in this important area remains very much in doubt, and the industry very much troubled.

The present posture of the law is that at least two state courts of last resort, Tennessee and California, have, on identical facts, held in favor of state law and federal law, respectively, in contexts where the clash between the two rules of law is direct and the decision outcome determinative. This Court denied a Petition for a Writ of Certiorari in *Dowell v. Beech Acceptance Corp.*, 404 U.S. 823 (1971), and while it is apparent that other courts have taken to heart this Court's admonitions not to draw conclusions from denial of Petitions for Writs of Certiorari, in that there have been decisions contrary to *Dowell*, the denial of the Petition for a Writ of Certiori in the instant case would add to the gross confusion which is typified both by the legal literature and the judicial decisions, to say nothing of the industry-wide problems created by the conflict between state and federal law.

Since World War II, an expanding economy and mass production of new technologies have combined to increase vastly the business and recreational use of both large and small aircraft. Large sums of money have been involved in financing the purchase of these highly expensive chattels, and as the demand for aircraft increased, more of the industry's capital needs were met through secured financing. Due to the considerable value of modern airplanes, aircraft parts and the economics of the industry, secured financing arrangements on a long term basis became necessary. This factor increased the likelihood of conflicts between secured lenders and the claims of subsequent lienors, purchasers, accessions suppliers, and mechanics lienors. See Sigman, *The Wild Blue Yonder: Interests in Aircraft under our Federal System*, 46 So. Cal. L. Rev. 316, 318 (1973).

The statutory language of the Federal Aviation Act leaves little room for doubt that Congress intended to promote the aircraft industry by protecting and facilitating aircraft financing.

State law (the Uniform Commercial Code) itself reflects an understanding of the very real possibility that a federal statute, dealing with special types of property, might have a preemptive effect on the application of state law. For example, Section 9-104 (T.C.A. § 47-9-104) states:

> This chapter does not apply
>
> (A) To a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, *to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property.* [Emphasis added].

Similarly, Comment 1 to T.C.A. § 47-9-104, states that "where a federal statute regulates the incidents of security interests in particular types of property, those security interests are, of course, governed by the federal statute and excluded from this article." The Federal Aviation Act is admittedly skeletal in nature, but the Supreme Court of California in *Dowell* held, and we believe we can show, plausibly, that the federal act does establish a complete system of priorities, needing no interstitial filling by state law. Only this Court can provide the needed guidance to the court and the industry on this question, and denial of this petition would immeasurably complicate the problem for all interests involved.

Finally, the decision below, in our view, is incorrect. The system of recordation established by Congress in the

Federal Aviation Act, while not so detailed as the system of priorities established by the Uniform Commercial Code (state law), nevertheless establishes a system of priorities easy of comprehension, certain of application and precise in its language. Adherence to its simple rules would have avoided any loss or difficulty to the respondent, Red Baron Flying Club, Inc., here. The statute simply provides in 49 U.S.C. § 1403(d) that "each conveyance . . . shall from the time of its filing for recordation be *valid as to all persons without further or other recordation.* . . ." [Emphasis added]. That "valid" does not refer to the inherent validity of the recorded instrument itself is shown by the express commitment of that issue to state law in § 1406. Furthermore, in the same sentence quoted from above, the word "effective" is used as being synonymous with "valid," indicating very clearly that, as used in the federal act, "valid" refers to a rule of priority.

CONCLUSION

For these reasons, a Writ of Certiorari should issue to review the judgment of the Supreme Court of Tennessee.

Respectfully submitted,

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October 27, 1978

APPENDIX

The pertinent provisions of the Federal Aviation Act, 49 U.S.C. §§ 1401-1406 (Vol. 10, Page 12054 of the United States Code, 1970 ed.) provide as follows:

§ 1401. Registration of aircraft nationality

Necessity; aircraft of national-defense forces; transfer of ownership

(a) It shall be unlawful for any person to operate or navigate any aircraft eligible for registration if such aircraft is not registered by its owner as provided in this section, or (except as provided in section 1508 of this title) to operate or navigate within the United States any aircraft not eligible for registration: *Provided*, That aircraft of the national-defense forces of the United States may be operated and navigated without being so registered if such aircraft are identified, by the agency having jurisdiction over them, in a manner satisfactory to the Secretary of Transportation. The Secretary of Transportation may, by regulation, permit the operation and navigation of aircraft without registration by the owner for such reasonable periods after transfer of ownership thereof as the Secretary may prescribe.

Eligibility for registration

(b) An aircraft shall be eligible for registration if, but only if—

(1) It is owned by a citizen of the United States and it is not registered under the laws of any foreign country; or

(2) It is an aircraft of the Federal Government, or of a State, Territory, or possession of the United States, or the District of Columbia, or of a political subdivision thereof.

Issuance of certificate

(c) Upon request of the owner of any aircraft eligible for registration, such aircraft shall be registered by the Secretary of Transportation and the Secretary shall issue to the owner thereof a certificate of registration.

Applications

(d) Applications for such certificates shall be in such form, be filed in such manner, and contain such information as the Secretary of Transportation may require.

Suspension or revocation

(e) Any such certificate may be suspended or revoked by the Secretary of Transportation for any cause which renders the aircraft ineligible for registration.

Effect of registration

(f) Such certificate shall be conclusive evidence of nationality for international purposes, but not in any proceeding under the laws of the United States. Registration shall not be evidence of ownership of aircraft in any proceeding in which such ownership by a particular person is, or may be, in issue.

§ 1402. Registration of engines, propellers, and appliances

The Secretary of Transportation may establish reasonable rules and regulations for registration and identification of aircraft engines, propellers, and appliances, in the interest of safety, and no aircraft engine, propeller, or appliance shall be used in violation of any such rule or regulation.

§ 1403. Recordation of aircraft ownership

Establishment of recording system

(a) The Secretary of Transportation shall establish and maintain a system for the recording of each and all of the following:

(1) Any conveyance which affects the title to, or any interest in, any civil aircraft of the United States;

(2) Any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which lease or other instrument affects the title to, or any interest in, any specifically identified aircraft engine or engines of seven hundred and fifty or more rated takeoff horsepower for each such engine or the equivalent of such horsepower, or any specifically identified aircraft propeller capable of absorbing seven hundred and fifty or more rated takeoff shaft horsepower, and also any assignment or amendment thereof or supplement thereto;

(3) Any lease, and any mortgage, equipment trust, contract of conditional sale, or other instrument executed for security purposes, which lease or other instrument affects the title to, or any interest in, any aircraft engines, propellers, or appliances maintained by or on behalf of an air carrier certificated under section 1424(b) of this title for installation or use in aircraft, aircraft engines, or propellers, or any spare parts maintained by or on behalf of such an air carrier, which instrument need only describe generally by types the engines, propellers, appliances, and spare parts covered thereby and designate the location or locations thereof; and also any assignment or amendment thereof or supplement thereto.

Recording of releases, cancellations, discharges or satisfactions

(b) The Secretary of Transportation shall also record under the system provided for in subsection (a) of this section any release, cancellation, discharge, or satisfaction relating to any conveyance or other instrument recorded under said system.

Validity of conveyances or other instruments; filing

(c) No conveyance or instrument the recording of which is provided for by subsection (a) of this section shall be valid in respect of such aircraft, aircraft engine or engines, propellers, appliances, or spare parts against any person other than the person by whom the conveyance or other instrument is made or given, his heir or devisee, or any person having actual notice thereof, until such conveyance or other instrument is filed for recordation in the office of the Secretary of Transportation: *Provided*, That previous recording of any conveyance or instrument with the Administrator of the Civil Aeronautics Administration under the provisions of the Civil Aeronautics Act of 1938 shall have the same force and effect as though recorded as provided herein; and conveyances, the recording of which is provided for by subsection (a)(1) of this section made on or before August 21, 1938 and instruments, the recording of which is provided for by subsections (a)(2) and (a)(3) of this section made on or before June 19, 1948, shall not be subject to the provisions of this subsection.

Effect of recording

(d) Each conveyance or other instrument recorded by means of or under the system provided for in subsection (a) or (b) of this section shall from the time of its filing for recordation be valid as to all persons without further or other recordation, except that an instrument recorded

pursuant to subsection (a)(3) of this section shall be effective only with respect to those of such items which may from time to time be situated at the designated location or locations and only while so situated: *Provided*, That an instrument recorded under subsection (a)(2) of this section shall not be affected as to the engine or engines, or propeller or propellers, specifically identified therein, by any instrument theretofore or thereafter recorded pursuant to subsection (a)(3) of this section.

Form of conveyances or other instruments

(e) Except as the Secretary of Transportation may by regulation prescribe, no conveyance or other instrument shall be recorded unless it shall have been acknowledged before a notary public or other officer authorized by the law of the United States, or of a State, territory, or possession thereof, or the District of Columbia, to take acknowledgment of deeds.

Index of conveyances and other instruments

(f) The Secretary of Transportation shall keep a record of the time and date of the filing of conveyances and other instruments with him and of the time and date of recordation thereof. He shall record conveyances and other instruments filed with him in the order of their reception, in files to be kept for that purpose, and indexed according to—

(1) the identifying description of the aircraft, aircraft engine, or propeller, or in the case of an instrument referred to in subsection (a)(3) of this section, the location or locations specified therein, and

(2) the names of the parties to the conveyance or other instrument.

Regulations

(g) The Secretary of Transportation is authorized to provide by regulation for the endorsement upon certificates of registration, or aircraft certificates, of information with respect to the ownership of the aircraft for which each certificate is issued, the recording of discharges and satisfactions of recorded instruments, and other transactions affecting title to or interest in aircraft, aircraft engines, propellers, appliances, or parts, and for such other records, proceedings, and details as may be necessary to facilitate the determination of the rights of parties dealing with civil aircraft of the United States, aircraft engines, propellers, appliances, or parts.

Previously unrecorded ownership of aircraft

(h) The person applying for the issuance or renewal of an airworthiness certificate for an aircraft with respect to which there has been no recordation of ownership as provided in this section shall present with his application such information with respect to the ownership of the aircraft as the Secretary of Transportation shall deem necessary to show the persons who are holders of property interests in such aircraft and the nature and extent of such interests.

§ 1404. Limitation of security owners' liability

No person having a security interest in, or security title to, any civil aircraft, aircraft engine, or propeller under a contract of conditional sale, equipment trust, chattel or corporate mortgage, or other instrument of similar nature, and no lessor of any such aircraft, aircraft engine, or propeller under a bona fide lease of thirty days or more, shall be liable by reason of such interest or title, or by reason of his interest as lessor or owner of the

aircraft, aircraft engine, or propeller so leased, for any injury to or death of persons, or damage to or loss of property, on the surface of the earth (whether on land or water) caused by such aircraft, aircraft engine, or propeller, or by the ascent, descent, or flight of such aircraft, aircraft engine, or propeller or by the dropping or falling of an object therefrom, unless such aircraft, aircraft engine, or propeller is in the actual possession or control of such person at the time of such injury, death, damage, or loss.

§ 1405. Dealers' aircraft registration certificates

The Secretary of Transportation may, by such reasonable regulations as he may find to be in the public interest, provide for the issuance, and for the suspension or revocation, of dealers' aircraft registration certificates, and for their use in connection with aircraft eligible for registration under this chapter by persons engaged in the business of manufacturing, distributing, or selling aircraft. Aircraft owned by holders of dealers' aircraft registration certificates shall be deemed registered under this chapter to the extent that the Secretary of Transportation may, by regulation, provide. It shall be unlawful for any person to violate any regulation, or any term, condition, or limitation contained in any certificate, issued under this section.

§ 1406. Law governing validity of certain instruments

The validity of any instrument the recording of which is provided for by section 1403 of this title shall be governed by the laws of the State, District of Columbia, or territory or possession of the United States in which such instrument is delivered, irrespective of the location or the place of delivery of the property which is the

subject of such instrument. Where the place of intended delivery of such instrument is specified therein, it shall constitute presumptive evidence that such instrument was delivered at the place so specified.

Tennessee Code Annotated, Section 47-9-307 (Vol. 8A, Cumulative Supplement, Page 48), provides as follows:

47-9-307. Protection of buyers of goods.—A buyer in ordinary course of business (subsection (9) of § 47-1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence.

IN THE SUPREME COURT OF TENNESSEE
AT NASHVILLE

BANK OF HENDERSONVILLE, *Petitioner*	:	
vs.	:	PUTNAM EQUITY
RED BARON FLYING CLUB, INC., et al., *Respondents*	:	

IN RE: PETITION FOR WRIT OF CERTIORARI OF BANK OF HENDERSONVILLE

Upon consideration of the petition and briefs in support thereof of the Bank of Hendersonville, the reply briefs of Red Baron Flying Club, Inc., et al., the amicus curiae brief of Aircraft Finance Association and General Aviation Manufacturers Association, the opinions of the Court of Appeals and the record in the cause,

Finding no error in the Court of Appeals the writ is denied at the cost of petitioner.

PER CURIAM

Filed: July 31, 1978

COURT OF APPEALS, NASHVILLE

RED BARON FLYING CLUB, INC., et al., *Appellant*	:	
vs.	:	PUTNAM EQUITY
BANK OF HENDERSONVILLE, *Appellee*	:	Reversed and Dismissed.

This cause coming on to be heard upon a transcript of the record from the Chancery Court of Putnam County, assignments of error, reply brief and argument of counsel, upon consideration whereof the Court is of opinion that in the decree of the Chancellor there is reversible error.

In accordance with the opinion of the Court filed herein, it is, therefore, ordered and decreed by this Court that the decree of the Chancellor be reversed and that the plaintiff's suit against Red Baron Flying Club, Inc., is dismissed.

All costs of the case will be paid by the Bank of Hendersonville for which execution may issue if necessary. 12/2/77. (Drowota, J., Dissenting)

BANK OF HENDERSONVILLE, *Plaintiff-Appellee,*	:	
vs.	:	PUTNAM EQUITY
RED BARON FLYING CLUB, INC., et al., *Defendants-Appellants.*	:	

COURT OF APPEALS OF TENNESSEE
MIDDLE SECTION AT NASHVILLE

APPEAL FROM CHANCERY COURT OF PUTNAM COUNTY, TENNESSEE

THE HONORABLE SCOTT CAMP, CHANCELLOR

Filed: Dec. 2, 1977

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HENRY F. TODD,
Judge

REVERSED AND DISMISSED

OPINION

The defendant, Red Baron Flying Club, Inc., has appealed from the Chancellor's decree sustaining the lien claim (security interest) of the plaintiff, Bank of Hendersonville, in respect to an aircraft purchased by appellant from Mid-South Aviation, Inc. On this appeal, only the respective rights of Red Baron and the bank are in issue.

The facts are uncontroverted. Mid-South, an aircraft dealer, sold to Red Baron the subject aircraft out of its (Mid-South's) stock of several aircraft. The plane was paid for by cashier's check. At the time, the appellee bank held a security interest upon a number of Mid-South's aircraft, including the subject plane. Mid-South failed to satisfy the security interest and this suit was filed to enforce same in respect to the subject plane. The bank's security interest was at all pertinent times duly recorded with the F.A.A. Aircraft Registry.

Before the Chancellor, and on appeal to this Court, the sole question is one of law: whether a security interest upon an airplane held as part of a dealer inventory duly recorded as required by federal law, is superior

to the rights of a purchaser for value from the dealer without actual notice of the security interest.

T.C.A. § 47-9-307 provides:

"**47-9-307. Protection of buyers of goods.**—A buyer in ordinary course of business (subsection (9) of § 47-1-201) other than a person buying farm products from a person engaged in farming operations takes free of a security interest created by his seller even though the security interest is perfected and even though the buyer knows of its existence; [Acts 1963, ch. 81, § 1 (9-307); 1965, ch. 362, § 1.]"

T.C.A. § 47-9-104 provides in part:

"**47-9-104. Transactions excluded from chapter.**—This chapter does not apply

(a) to a security interest subject to any statute of the United States such as the Ship Mortgage Act, 1920, to the extent that such statute governs the rights of parties to and third parties affected by transactions in particular types of property; or . . ."

"Comments to Official Text" under said statute include the following:

"**Purposes:**

To exclude certain security transactions from this Article [Chapter].

1. Where a federal statute regulates the incidents of security interests in particular types of property, those security interests are of course governed by the federal statute and excluded from this Article [Chapter]. The Ship Mortgage Act, 1920, is an example of such a federal act. Legislation covering aircraft financing has been proposed to the Congress, and, if enacted, would displace this Article [Chapter] in that field. The present provisions of

the Civil Aeronautics Act (49 U.S.C. § 523) call for registration of title to and liens upon aircraft with the Civil Aeronautics Administrator and such registration is recognized as equivalent to filing under this Article [Chapter] (Section 9-302(3)); but to the extent that the Civil Aeronautics Act does not regulate the rights of parties to and third parties affected by such transactions, security interests in aircraft remain subject to this Article [Chapter], pending passage of federal legislation."

Appellee refers to the "Comments" just quoted as being "obsolete," because it does not take cognizance of Federal Legislation passed in 1958 and 1959, not cited by appellee. However, T.C.A. § 47-9-104 was passed in 1963, long after 1958 and 1959, from which it is difficult to conceive an intelligent "comment" made in ignorance of 1958 and 1959 law.

The brief of appellee refers to the Federal Aviation Act generally, but does not cite specific portions thereof. More detailed citation would have been more in conformity with the rules of this Court and would have been a distinct courtesy, kindness and convenience to this Court.

Title 49 §§ 1403, 1406, of the U.S. Code provides:

"**§ 1403. Recordation of aircraft ownership**

Establishment of recording system

(a) The Secretary of Transportation shall establish and maintain a system for the recording of each and all of the following:

(1) Any conveyance which affects the title to, or any interest in, any civil aircraft of the United States; . . .

* * *

Effect of recording

(d) Each conveyance or other instrument recorded by means of or under the system provided for in subsection (a) or (b) of this section shall from the time of its filing for recordation be valid as to all persons without further or other recordation, . . .

* * *

§ 1406. Law governing validity of certain instruments

The validity of any instrument the recording of which is provided for by section 1403 of this title shall be governed by the laws of the State, District of Columbia, or territory or possession of the United States in which such instrument is delivered, irrespective of the location or the place of delivery of the property which is the subject of such instrument. Where the place of intended delivery of such instrument is specified therein, it shall constitute presumptive evidence that such instrument was delivered at the place so specified."

Appellant insists that the federal statute just quoted does not aptly preempt and remove airplanes from the provisions of the state statute which favor a purchaser in ordinary course of business over the holder of a mortgage on inventory.

Appellee insists that the federal statute does preempt the subject priority of interests in aircraft and creates a right in favor of the holder of a security interest in an aircraft held in stock by a dealer, such right being superior to that of a purchaser from the dealer in ordinary course of business.

In *Texas National Bank of Houston v. Aufderheide, et al.*, (U.S.D.C., Ark-1964), 235 F.Supp. 599, there was a "floor plan" lien, duly recorded with the F.A.A., but

the mortgagee was shown to have followed a practice of allowing the dealer to sell and deliver planes out of stock in violation of the mortgage instrument. The District Court held that the mortgagee had, by its conduct, waived any priority of rights against the purchaser and said:

"[1] There is no question that the Congress by the statutory enactments which have been mentioned has preempted the field of registration and recording of title instruments affecting commercial aircraft, Pacific Financial Corporation v. Central Bank & Trust Co., 5 Cir., 296 F.2d 68, 71, so that protection is no longer afforded to a purchaser or mortgagee of such an aircraft by a recording of his conveyance or mortgage under a State recording statute.

"[2] On the other hand, compliance with section 1403 does not validate a conveyance or other instrument which is lacking in initial or inherent validity as a contract document between the original parties, as, for example, a mortgage or conveyance obtained by fraud or without consideration, or executed by an incompetent party. Questions of such inherent or original validity must be determined by reference to applicable State law. This has been expressly recognized by the Congress. See in this connection the Act of June 30, 1964, P.L. 88-346, 78 Stat. 236, which statute, among other things, provides that the validity of a conveyance or other instrument affecting an aircraft is to be determined by the law of the place where the instrument is delivered. In the Court's estimation the validity about which Congress was talking in the 1964 Act is what the Court has referred to as the initial or inherent validity of the instrument in question.

"[3] While the act of recording a conveyance or mortgage under the terms of the federal statute or any other recording statute does not confer inherent validity upon an instrument otherwise basically invalid, proper recordation can, and usually does, have a substantial bearing on the validity of the instrument as to third persons, and as to the priority to be accorded to that instrument with respect to other claims or liens affecting the property involved whether arising before or after the recordation.

* * *

II.

"[5,6] It does not follow, however, that section 1403 has repealed or abolished the general rule of chattel mortgage law that when a mortgagee consents to the sale of a mortgaged chattel free of lien by the mortgagor, the purchaser takes free of the mortgage lien and his rights are superior to those of the mortgagee. 15 Am.Jur.2d, Chattel Mortgages, §§ 150, 151, and 153; 14 C.J.S. Chattel Mortgages § 262. And a provision in a chattel mortgage prohibiting a sale of the mortgaged chattel without a mortgagee's consent is waived if the mortgagee knowingly permits the violation of such provision. 15 Am.Jur.2d, p. 324."

235 F.Supp., p. 603

In *State Securities Company v. Aviation Enterprises, Inc., et al.*, (10th USCA, 1966), 355 F.2d 225, the dealer executed a mortgage on the subject aircraft which was subsequently sold to a customer who had no knowledge of the mortgage which was *not* recorded with the F.A.A. as required by federal law. The purchaser did not record his bill of sale with the F.A.A., but the U.S. Court of Appeals sustained the rights of the purchaser as superior to those of the mortgagee stating:

"[1,2] By providing a federal system for registration of conveyances and liens affecting the title to aircraft, Congress has preempted that field and state recording statutes are not applicable to such title instruments. However, questions of the validity of such title documents, actual notice, good faith purchaser status, and the like, must be resolved under state law.

"In Bordman Invest. Co. v. Peoples Bank of Kansas City, Mo. App., 320 S.W.2d 72, 76-77, the court held in part as follows:

'In almost all jurisdictions the recognized rule is that where a mortgagee of an automobile or other chattel knows the mortgagor is a dealer, buying to sell the automobile or other chattel in the regular course of business, and consents to its sale by the mortgagor, the purchaser takes free from the mortgagee's lien. . . .

'In such situations, as between an owner or mortgagee who entrusts the chattel to another for purposes other than a complete sale and the one who buys the chattel from the latter without notice of the seller's lack of authority to sell, the courts have evolved the estoppel theory based on the maxim that, as between two innocent victims of fraud, the one who makes possible the fraud on the other should suffer. It is felt that under such circumstances a purchaser in good faith of a motor vehicle from the stock in trade of a recognized dealer is not bound to investigate the dealer's title in anticipation of the unknown claims of a mortgagee or seller of such vehicle who should be aware of the danger of the buying public being misled and has made the situation possible by permitting the dealer to have the automobile in his stock in trade.'"

355 F.2d, p. 229

Northern Illinois Corporation v. Bishop Distributing Co., et al., USDC Mich. 1968, 284 F.Supp. 121, involved the same situation and decision as *Texas National Bank*, supra, with quotations from the Uniform Commercial Code (§ 9-307 supra), and the "Comment" to § 9-104, quoted supra. Also said opinion states:

"Plaintiff argues that because aircraft are much more costly than household goods or cars, a buyer of an aircraft should be required to conduct an aircraft title search. In this respect, plaintiff contends that all that would have been required of the defendants would have been for them to check with the Federal Aviation Agency in Oklahoma City, Oklahoma.

"[9] We question whether the price of goods should determine the duties and obligations of the buying public. Plaintiff was aware that Mich-Air Mooney, Inc. purchased the aircraft in order to sell it.

"[10-13] Although both plaintiff and defendants are innocent parties to a very unhappy chain of events, in determining who should bear the loss we conclude that buyers in the ordinary course of business should not be required to act at their peril. As Chief Judge Henley said in Texas National Bank of Houston, supra:

'Ordinarily, when a person goes into a merchant's place of business to make a purchase, whether it be of an automobile, a television set, a washing machine, or a pound of nails, the purchaser ought to have the right to assume that the merchant has a right to sell the commodity in question and should not be required to make a record search before purchasing or to see to it that the merchant obtains a valid release of the item from a bank floor plan before delivering it to the purchaser and

receiving his money or obligation. The Court sees no reason why that right should not extend to the purchaser of an airplane who buys it from a recognized dealer from a regular inventory or display and in the ordinary course of business. 235 F.Supp. at 604."

284 F.Supp., p. 125

United States Aviation Underwriters v. WTAE Flying Club, et al., U.S.D.C. Penn. 1969, 300 F.Supp., 341, was an interpleader suit to determine right to proceeds of insurance policy on an aircraft which was encumbered with a duly recorded lien at the time it was purchased from a dealer. The District Court awarded proceeds to the purchaser on grounds of misconduct of the lienholder and said:

"[8] Steensen was a buyer of the Cessna in the ordinary course of business. A buyer in the ordinary course of business is one who in good faith and without knowledge that the sale to him is in violation of the ownership rights or the lien of a third party in the goods, buys in ordinary course from a person in the business of selling goods of that kind. Steensen was such a buyer."

300 F.Supp., p. 348

In *Suburban Trust & Svgs. Bank v. Campbell*, CCP Ohio 1969, 10 Ohio Misc. 74, 250 N.E.2d 118, the rights of a purchaser in ordinary course of business were held superior to the lien of a chattel mortgage executed by the dealer after the sale to renew a prior mortgage recorded before the sale. Although decided on principles of novation, the opinion also supports the superior rights of the purchaser of an airplane in ordinary course of business.

In *Southern Jersey Airways, Inc. v. National Bank of Secaucus*, N.J. App. 1970, 261 A. 399, there was a contest between the holder of an unrecorded mechanic's lien in possession and the holder of a prior mortgage duly recorded with the F.A.A. The New Jersey Appellate Division held in favor of the mechanic and said:

"[5-7] Thorough study of the matter convinces us that Congress did not intend by adoption of the cited recordation procedure necessarily to displace and preempt all state law otherwise applicable bearing upon priorities of lien and title interests in aircraft. Rather was it the intent, in relation to aircraft, to substitute for the multiplicity of state registration or recording systems a single preemptive federal system for registering (1) instruments of title, comparable to state registration of titles to motor vehicles, and recording (2) security documents of the kinds commonly comprehended by state recording laws concerning written consensual security interests affecting personal property. The reason was that the ready mobility of aircraft and their common use across state lines made it cumbersome and burdensome for persons having concern with the title to or incumbrances on aircraft to have to record or search in all states or localities which could arguably be claimed to constitute the proper recording situs in relation to the specific owner or incumbrancer of a particular aircraft. See Scott, 'Liens in Aircraft: Priorities,' 25 J. Air L. & Com. 193, 200, 203 (1958); Case Note, 48 Colum. L. Rev. 1248 (1948). Thus, failure to federally record a recordable instrument would entail the specific consequences declared by § 1403(c), but no other. Federal recording would validate a title or incumbrance as against any claim of invalidity based upon absence of state recording, but would not neces-

sarily create affirmative priority as against competing rights declared by applicable state law.

* * *

". . . Professor Gilmore's authoritative text states:

The several provisions summarized above obviously amount to a good deal more than a recording system (like the patent and copyright provisions) but are still a good deal less than a comprehensive coverage of security interests in aircraft; they are much less comprehensive than the Ship Mortgage Act, which goes into great detail on the formal requisites and priorities of ship mortgages and includes sections on foreclosure and on the status of mortgages on foreign flag ships. There is of course no plenary federal power over air transportation comparable to the patent and copyright powers or even to the extention [*sic*] of the 'judicial power of the United States' to admiralty and maritime cases. Here Congress acts under the interstate commerce and the bankruptcy powers—which have, however, become so extensive that there is not likely to be any constitutional challenge to anything Congress has done or may do in the future. A truly comprehensive security statute for aircraft—or indeed a statute covering security interests in transportation equipment of any kind, by air, rail, road and water—would undoubtedly be within the power of Congress to enact; there is, however, little likelihood that such a federal preemption of the field will take place in the near future. [1 Gilmore, Security Interests in Personal Property, § 13.5, at 423 (1965).]

"Except for the engine and spare parts liens, § 503 is not in any sense a substantive statute. Therefore, it is believed, apart from these substantive provisions, the question of formal requisites,

and the operation of the recording system, state law should apply to determine any question arising in connection with a security interest in aircraft. The argument for a federal law solution is even weaker here than under any of the other federal statutes we have so far discussed: § 503 is much less comprehensive than the Ship Mortgage Act and there is not the same federal source of power that could be alleged in favor of a federal solution in the fields of copyright, patent and admiralty law. The cases decided under § 503 all seem to assume that state law is generally applicable and that § 503 is clearly an 'interstitial' statute, which goes as far as it goes but no further. [Id., at 426-427]

"Striking a similar note is Scott, *supra*, 25 J. Air L. & Com., at 202, wherein, after discussing the case holding the federal act constitutionally applicable to aircraft used solely in intrastate commerce, the writer says:

"**Meaning of Section 503** [now § 1403]. Accepting the constitutional validity of the section, we are then faced with the more important question—what priority in right is obtained by a security holder through federal recordation? Clearly it is not axiomatic that recordation assures priority as to subsequent lienors, and the statutory language cannot be construed in such a way as to leave the matter free from doubt. The statute merely provides that conveyances or other instruments filed for recordation shall be valid as to all persons . . . . It does not speak in positive terms of priority, as does for instance the Ship Mortgage Act of 1920 discussed above.

"Most of the decisions having to do with the federal act have been careful to delineate its recording provisions as preemptive and exclusive only in

respect of place and requirements of recording and the effect of failure to record a federally recordable conveyance or instrument as to subsequent bona fide purchasers or lienors without notice. Aircraft Investment Corp. v. Pezzani & Reid Equipment Co., 205 F.Supp. 80, 82 (E.D. Mich. 1962); American Aviation v. Aviation Insurance Managers, Inc., 244 Ark. 829, 427 S.W.2d 544, 547 (Sup. Ct. 1968); Blalock v. Brown, 78 Ga. App. 537, 51 S.E.2d 610, 9 A.L.R.2d 476 (Ct. App. 1949); State Securities Company v. Aviation Enterprises, Inc., 355 F.2d 225, 229, 22 A.L.R.3d 1263 (10 Cir. 1966); Marsden v. Southern Flight Service, Inc., 227 F.Supp. 411, 415 (M.D.N.C. 1961); cf. Lochhead v. G.A.C. Finance Corp. of Camelback, 6 Ariz. App. 539, 434 P.2d 655 (Ct. App. 1968); Curtis v. Carey, 393 S.W.2d 185, 189 (Tex. Ct. Civ. App. 1965).

* * *

"Plaintiff suggests that Congress has preempted the entire field of conveyancing of interests in aircraft. This view is erroneous, notwithstanding In re Veterans' Air Express Company, 76 F.Supp. 684 (D.N.J. 1948), which contains dicta on which plaintiff relies. Congress has said only that until an instrument purporting to convey an interest in an aircraft is recorded, in accordance with the Act, it is void as to third parties without notice. Upon federal recordation, it is valid without further recording. [205 F.Supp., at 82]"

261 A.2d, pp. 403, 404, 405

In *Dowell v. Beech Acceptance Corp.*, Calif. 1971, 476 P.2d 401, the California Supreme Court, relying principally upon decisions of the California Court of Appeals, determined that a lien upon part of an aircraft dealer's stock in trade, duly recorded with F.A.A., was superior to the claim of a purchaser in ordinary course of business.

The California Court was of the opinion that the federal statute did preempt all phases of lien law in respect to aircraft and thereby created an exception to the provisions of U.C.C. as to purchasers in ordinary course of business. The same opinion relies upon the annotation in 22 A.L.R.3d 1270. The pertinent portion of said annotation is § 12(b), pp. 1292 and 1293 wherein only two cases are mentioned. One is *Dawson v. General Discount Corp.*, 82 Ga. App. 29, 60 S.E.2d 653 (1950), which was not based upon the U.C.C. protection of purchasers (from a dealer) in ordinary course of business. The unsuccessful defendant, Dawson, purchased the plane from an individual who had not satisfied the lien of a duly recorded conditional sales contract.

The only other case mentioned in said annotation is *Texas Nat. Bk. v. Aufderheide*, a 1964 case already discussed, wherein the rights of the purchaser were upheld.

The Dowell decision also relies upon three U.S. District Court decisions and two State decisions which involve superiority of recorded liens over unrecorded mechanics liens and one State decision involving superiority of prior recorded chattel mortgage over subsequently recorded chattel mortgages. None of the out-of-state authorities relied upon in *Dowell* involves the rights of a purchaser in ordinary course of business from a dealer.

Dowell does recognize *Northern Ill. Corp. v. Bishop Co.* and *Texas National Bank v. Aufderheide*, supra, but "simply declines to follow them."

Dowell ignores *State Securities Co. v. Aviation Enterprises Inc.* (U.S. Court of Appeals), *U.S. Aviation Underwriters v. WTAE Flying Club* (U.S. District Court, Mich.), and *Southern Jersey Airways v. National Bank of Secaucus* (New Jersey Appellate Div.), all discussed supra.

Subsequent decisions have been contrary to the holding of *Dowell.*

In *Carolina Aircraft Corp. v. Commerce Trust Co.* (Fla. App. 1974), 289 So. 2d 37, the lien of a mechanic in possession was held to be superior to that of a prior recorded mortgage.

To the same effect is *Industrial National Bank of Rhode Island v. Butler Aviation International Inc.*, U.S.D.C. E.D. NY-1974, 370 F.Supp. 1012.

In *Idabel National Bank v. Tucker*, Okla. App. 1975, Cert. Den. by Okla. Supr. Ct., the title and right of a purchaser in ordinary course of business was held to be superior to that of a bank holding a prior recorded mortgage from the dealer. After quoting applicable and persuasive portions of the legislative history of the U.S.C.A. § 1403, the Oklahoma Court adopts the language of *Texas National Bank v. Aufderheide*, supra as follows:

> "Ordinarily, when a person goes into a merchant's place of business to make a purchase, whether it be of an automobile, a television set, a washing machine, or a pound of nails, the purchaser ought to have the right to assume that the merchant has a right to sell the commodity in question and should not be required to make a [second] search before purchasing or to see to it that the merchant obtains a valid release of the item from a bank floor plan before delivering it to the purchaser and receiving his money or obligation. The Court sees no reason why that right should not extend to the purchaser of an airplane who buys it from a recognized dealer from a regular inventory or display and in the ordinary course of business."
>
> 544 P.2d, p. 1291

From the foregoing, it is evident that the proper disposition of the issue is not without doubt.

Appellee relies upon only one authority, *Dowell*, and for grounds states that all other authorities are ill considered and that *Dowell* is dominant because the U.S. Supreme Court denied certiorari in that case.

The denial of certiorari by the United States Supreme Court cannot be ignored, but its action (or inaction) must be considered in the light of the repeated assertions of that Court that its denial of certiorari is not proper basis for unwarranted inferences of what the holding of the Court might have been had it granted certiorari. It is also significant that *Dowell* preserved and extended the encroachment of federal law in the state field of commercial law, rather than restricting the application of federal law. State decisions of the former type have been rarely reviewed by the U.S. Supreme Court, whereas decisions of the latter type have been more frequently reviewed.

California appears to stand alone in its insistence that a customer who buys an airplane out of the stock of a dealer must carry out a "title search" for recorded "floor plan" liens.

This Court prefers to follow the rule announced in all other decisions that the rights of a purchaser from a dealer in ordinary course of business are superior to the holder of a lien upon a moving stock of planes in the hands of a dealer. There are a number of reasons why this decision is preferable.

1. The Uniform Commercial Code has brought uniformity and order to the field of commercial law. To graft a new class of exceptions upon the existing uniform

law would reverse the wholesome intent and result of the law.

2. It is not reasonable to assume that Congress intended any such result where not clearly stated.

3. The proliferation of aircraft dealerships and aircraft purchases would be seriously hampered if the public were not allowed to trust dealers selling in ordinary course of business.

4. It is inequitable and unjust to allow a mortgagee to hold "secret liens" on chattels while authorizing the chattels to be exhibited for sale by a dealer to the deception and loss of the purchasing public.

5. Lienholders may protect themselves (if they desire) by impounding the mortgaged planes in locked surroundings inconsistent with the free-sale situation of a stock of merchandise.

For the reasons and under the authority stated, the decree of the Chancellor is reversed, the plaintiff's suit against Red Baron Flying Club, Inc., is dismissed, and all costs, including costs of this appeal, are taxed against the plaintiff.

Reversed and Dismissed.

/s/ Henry F. Todd, Judge

SHRIVER, P. J., CONCURS

DROWOTA, J., DISSENTS

Filed: December 2, 1977

BANK OF HENDERSONVILLE, *Plaintiff-Appellee*	:	
vs.	:	PUTNAM EQUITY
RED BARON FLYING CLUB, INC., et al., *Defendants-Appellants*	:	

DISSENT

I respectfully dissent from the conclusion reached in the majority opinion that the purchaser of an aircraft who qualifies as a "buyer in ordinary course of business" under T.C.A. § 47-9-307 is protected by that statute from the claim of one holding a security interest recorded under 49 U.S.C. § 1403 prior to the sale. While the issue is obviously not free from doubt and while the force of many of the policy considerations espoused by the majority in favor of the U.C.C. rule cannot be gainsaid, I believe that Congress intended in § 1403 to set up a rule of priority that controls the instant situation, and that we should follow *Dowell v. Beech Acceptance Corp., Inc.*, 3 Cal. 3d 544, 475 P.2d 401, 91 Cal. Rptr. 1 (1970).

The Court in *Dowell* furnishes a reasoned explanation of its conclusion that 49 U.S.C. § 1401 *et seq.* pre-empt state priority rules and render the rights of the holder of a security interest recorded under § 1403 prior to the sale of an aircraft superior to those of one who buys the aircraft in the "ordinary course of business" within the meaning of U.C.C. § 9-307. In addition, a reading of the federal provisions themselves seems to me to require this result. Section 1403(a) sets out the types of interests

recordable under the statute, and its language encompasses the security interest involved in the instant case. Section 1403(c) provides that no instrument recordable under the statute shall be "valid" except against "the person by whom the conveyance or other instrument is made or given, his heir or devisee, or any person having actual notice thereof" until it is recorded as provided in the statute. The effect of proper recording is stated by § 1403(d) to be as follows:

> (d) Each conveyance or other instrument recorded by means of or under the system provided for in subsection (a) or (b) of this section shall from the time of its filing for recordation be *valid as to all persons* without further or other recordation. . . . [Emphasis added.]

That "valid" does not refer to the inherent validity of the recorded instrument itself is shown by the express commitment of that issue to state law in § 1406. The most logical explanation of § 1403(d), then, is that recording an instrument makes it "valid as to all persons" in the sense that its holder acquires rights superior to those acquired by subsequent persons such as purchasers.

The priority conferred by recording under § 1403 is very similar to that given recorded deeds of real property under the theory of constructive notice. The similarity is brought out by a description of the effect of § 1403 recording in the legislative history of the 1964 amendment to § 1401 *et seq.* It is there stated that, when an instrument has been properly recorded under the statute,

> . . . all persons are deemed to have notice of its existence and its effect on title to the property covered thereby. Consequently, to determine whether there are any encumbrances on the aircraft, it is only necessary to consult the central file.

1964 U.S. Code Cong. & Adm. News 2320. In my view, this strengthens the conclusion that the rights of one who has recorded a security interest under § 1403 are superior to those of a subsequent purchaser of the encumbered aircraft.

Much of the policy in favor of protecting one who purchases in the ordinary course of business is sound, and has been widely accepted by state courts and by state legislatures adopting the U.C.C. Nevertheless, 49 U.S.C. § 1403 evidences Congress's intent to reverse this rule in the case of security interests in aircraft which are recordable under the statute. Congress has chosen to give priority to the secured party rather than the buyer in such cases by applying its own uniform rule, a rule not subject to change by the legislatures of the several states. This uniform federal rule simply removes the priority question from determination under the U.C.C. when certain aircraft are involved, rather than "grafting exceptions" onto the Code as the majority suggest. The principle of federal supremacy, recognized in T.C.A. § 47-9-104, requires that this federal priority rule replace conflicting state rules of priority with regard to aircraft.

Further, the buyer's burden of checking the federal record in such cases is a light one. This is especially so when it is compared to the steps a secured party would have to take, such as locking up the aircraft, to protect himself under the majority's approach. Far from being "secret," any interest recorded under § 1403 is readily available for anyone to see. Finally, it is again pointed out that the similar system of "constructive notice" in real property recording, under which a subsequent purchaser would not take free of previously recorded instruments in his chain of title, has worked reasonably well and is not generally considered to be unfair.

In sum, I find in 49 U.S.C. § 1401 *et seq.* an intent to prefer the rights of a secured party such as plaintiff over those of a buyer in the ordinary course of business such as defendant in the circumstances of the instant case. The *Dowell* Court was correct in saying that

> . . . [t]he federal policy to foster recordation and to protect recorded interests is eviscerated by a rule which relies on state laws to protect the buyer in the ordinary course of business even though he fails to undertake a simple title search which would have readily revealed all encumbrances.

476 P.2d at 406, 91 Cal. Rptr. at 6. We should not frustrate the federal purpose of encouraging recording of interests in aircraft and disregard the intent of Congress by reading state laws of priority such as U.C.C. § 9-307 into the federal scheme.

/s/ Frank F. Drowota, III, Judge.

Filed: December 2, 1977

IN THE CHANCERY COURT FOR
PUTNAM COUNTY, TENNESSEE

BANK OF HENDERSONVILLE, *Plaintiff,*	:	
versus	:	CIVIL ACTION NO. 1002
MID-SOUTH AVIATION, INC., RED BARON FLYING CLUB, INC., and CITIZENS BANK OF COOKEVILLE, TENNESSEE, *Defendants.*	:	

MEMORANDUM OPINION

The issue to be determined in this case is that of whether a party which provides financing for a seller and lessor of aircraft will prevail over a purchaser of an aircraft from the borrower's inventory where no attempt is made to determine if there is a valid security interest in the aircraft owned by someone else.

Most excellent briefs have been filed by eminent counsel on each side of the case. Comprehensive Stipulation of Facts has been filed. This stipulation includes the pertinent exhibits.

I have read and studied the briefs filed by respective counsel with a great deal of interest. I am of the opinion that our Uniform Commercial Code 9-307, TCA, 47-9-307, which purports to protect "purchasers in the ordinary course of business" does not apply to this transaction but that to the contrary the provisions of

the Federal Aviation Act, 49 U.S.C., et seq., have pre-empted the state law and require protection for the owner of the admittedly validly perfected security instrument at the time of the sale to the Red Baron Flying Club, Inc.

It results therefore that the complaint of the Bank of Hendersonville is sustained. Counsel will prepare a final decree for my signature in accord with this Memorandum Opinion.

Done at Sparta, Tennessee, on this the 22nd day of December, 1976.

/s/ SCOTT CAMP, Chancellor

[Certificate of Service Omitted in Printing]